

Montana Water Court
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MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: Drysdale Family LLC

CASE 43B-0762-R-2022

43B 4184-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

This claim appeared in the Preliminary Decree with the following issue remarks:

THE CLAIMED MEANS OF DIVERSION CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE NWNESE SEC 7 TWP 6S RGE 8E PARK COUNTY.

The issue remarks were not addressed through the objection process. The Water Court is required to resolve the issue raised by an issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence.

The December 8, 2022 Order Consolidating Case And Setting Scheduling Conference set a January 11, 2023 scheduling conference. The claimant did not appear. The January 11, 2023 Court Minutes, Order Entering Default, and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA set various deadlines for the claimant and the Bozeman Regional DNRC Office ["DNRC"]. The claimant did not file documentation as directed in this Order. On April 14, 2023 the DNRC Memorandum was filed stating that the claimant failed to contact the DNRC. The DNRC Memorandum makes recommendations for changes to resolve the issue remarks.

The April 24, 2023 Second Order Entering Default and Order Setting Show Cause Deadline Pursuant To Section 85-2-248(9), MCA set a May 22, 2023 to show cause in writing why the claim should not be modified per the memorandum and states: "[I]f nothing is filed by the deadline, the Court will conclude the claimant agrees with the changes recommended in the DNRC Memorandum." Nothing was filed by the claimant. These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and

overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Preliminary Decree states that the means of diversion is MULTIPLE. The means of diversion should be PIPELINE and the following clarification remark should be added: PUMP USED AS AN ADDITIONAL MEANS OF DIVERSION. The means of diversion issue remark should be removed as addressed and resolved.

2. The Preliminary Decree states that the legal description for the place of use is the NESE section 7, T6S, R8E, PARK. The legal description should be the NWNESE section 7, T6S, R8E, PARK. The place of use issue remark should be removed as addressed and resolved.

3. The Preliminary Decree also includes the following notice remark:

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The DNRC Memorandum is sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Finding of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service Via USPS Mail:

Drysdale Family LLC
511 Perkins Pl
Bozeman, MT 59715

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 4184-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DRYSDALE FAMILY LLC
511 PERKINS PL
BOZEMAN, MT 59715

Priority Date: DECEMBER 31, 1892

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 25.00 GPM

Volume: 9.50 AC-FT

Households: 2

Maximum Acres: 3.92

Source Name: UNNAMED TRIBUTARY OF YELLOWSTONE RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNESE	7	6S	8E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

PUMP USED AS AN ADDITIONAL MEANS OF DIVERSION

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	3.92		NWNESE	7	6S	8E	PARK

Total: 3.92